



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

PRICE DANIEL  
ATTORNEY GENERAL

October 2, 1947

Hon. John H. Winters,  
Executive Director,  
Department of Public Welfare,  
Austin, Texas

Opinion No. V-396

Re: The effect to be accorded funds in the Registry of a Court which are available to the recipient of an inheritance in determining his eligibility for old age assistance benefits.

Dear Sir:

Your request for an opinion by the department upon the above subject matter is as follows:

"We shall appreciate your opinion and interpretation of the provisions of House Concurrent Resolution No. 33, Acts of the 49th Legislature, regarding cash which may be possessed by recipients of old age assistance.

"A former recipient's grant was denied on the basis that he had \$419.89 in the registry of the district court. He alleges that the money is not his and not available, and therefore, that the department's policy of exempting from consideration \$300 which is possessed by any recipient in accordance with the recommendation of the 49th Legislature, as expressed in House Concurrent Resolution No. 33, does not apply in his case on the basis that it is not possessed and is not available.

"According to the information furnished the department, this recipient's sisters received an interest in an estate from a relative under the terms of the relative's will. The sisters died intestate without heirs, and when their estates were settled our recipient

received an interest in their estates. Following the death of the sisters a receiver was appointed, and the district court ordered the estates sold and the proceeds divided after encumbrances and taxes were paid. The court determined the interests of the various heirs, and \$419.89 was set aside as belonging to our recipient. Under the direction of the court a check was sent to the recipient, but he refused to accept it stating that he did not think he had any interest in the estate as he was not mentioned in the original will, and too, he did not want to accept the money as he felt that his refusal would cloud the title to the property.

"In determining eligibility, the department has discussed the matter with the clerk of the district court who states that the money is in the registry of the court and will be given to the recipient at any time when he requests it. On this statement the department has considered that the money is available to the recipient; and therefore, any amount in excess of the \$300 which may be possessed by a recipient in accordance with House Concurrent Resolution No. 33 is a potential resource to him, and therefore, would render him ineligible.

"Since the recipient insists that the money in the registry of the court would not, in effect, be available or possessed by him, we shall appreciate your opinion as to whether or not this money which was deposited in the registry of the court by the receiver constitutes a resource as expressed in House Concurrent Resolution No. 33."

House Concurrent Resolution No. 33 of the 49th Legislature (1945) is not an act having any force whatever as law. On the contrary, it constitutes only a recommendation, request, or desire on the part of the Texas Legislature expressed with reference to the subject matter thereof, as it clearly purports to be. It

declares "that it is the sentiment and desire of the Texas Legislature that the State Public Welfare Department adopt a rule allowing applicants for and recipients of aid to the needy blind or old age assistance to possess as much as Three Hundred Dollars (\$300.00) in cash moneys or in bonds or in other property, at any given time, regardless of the source from which such assets are realized or received, without being subject to denial of assistance grants or applications, if otherwise eligible." We assume, however, that the Department has adopted the rule thus stated in the resolution and shall answer your specific question upon that assumption.

It is our opinion under the facts stated by you, that the conclusion of your department was correct to the effect that the money in the hands of the Clerk of the District Court was and is the money of the recipient possessed by and available to him within the meaning of Article 695c, Vernon's Civil Statutes. No question of waiver or disclaimer is here presented because it does not appear that any such instrument was filed. The recipient may not now deny that he owns the amount adjudged to him by the Court nor may he say that such sum is not possessed by or available to him when it may be had for the mere asking.

SUMMARY

A sum of money adjudged to belong to a recipient of Old Age Assistance Benefits in the distribution of a decedent's estate, which has been duly placed with the Clerk of the Court for delivery to the recipient and which he has refused to accept, is money or property owned and possessed by, and available to, him within the meaning of Article 695c, Vernon's Civil Statutes.

Yours very truly,

APPROVED:

ATTORNEY GENERAL OF TEXAS

*Fagan Dickson*

FIRST ASSISTANT  
ATTORNEY GENERAL

By

*Ocie Speer*

Ocie Speer  
Assistant

OS:wb